

WASHINGTON COUNTY BOARD OF EQUALIZATION
APPEAL HEARING MINUTES
MAY 16, 2013

Chairman James J. Eardley called the Board of Equalization to order at 2:00 p.m. on Thursday, May 16, 2013, in the Commission Chambers of the Washington County Administration Building, 197 E. Tabernacle St., St. George, UT 84770. Those present were James J. Eardley, Alan D. Gardner, Assessor Arthur L. Partridge, Administrator Dean J. Cox, Deputy County Attorneys Eric Clarke and Jodi Borgeson, Clerk-Auditor Kim M. Hafen, State Tax Commission representative Herb Jenkins, Appellant Benjamin Ruesch, Personal Property Supervisor Rhonda Hall, and Deputy Clerk Christine S. Hall.

BOARD OF EQUALIZATION / STATE AUDIT APPEAL

Consideration of Appeal of Personal Property Tax Notice, Account No. P030591 / Benjamin Ruesch

Mr. Partridge said that Mr. Ruesch has appealed the audit that was done by the Utah State Tax Commission of his personal property for 2011 and 2012. This hearing is to take testimony on that issue.

Mr. Ruesch acknowledged that this issue concerns approximately sixty dollars (\$60) per year on the assessment of his personal property. His understanding of personal property assessment taxes is that, according to Utah Code Section 59.2.108, one uses the acquisition cost of property to determine assessment values. Acquisition cost is defined as “. . . all costs required to put an item of tangible personal property into service. . . .”

On June 28, 2010, he and his law partner purchased assets from Chris Edwards, who is no longer practicing law. The purchase agreement states that all property was purchased for the sum of five dollars (\$5.00).

Herb Jenkins, Manager of Personal Property for the State of Utah Tax Commission, responded that his office performed an audit on Mr. Ruesch. He said that the Utah Constitution says that all property in Utah is taxed at its fair market value. Acquisition cost is used in valuing personal property if it is an “arm’s length transaction,” meaning that it had a willing buyer, willing seller, the sale was advertised, and others had the opportunity to purchase the items. The audit assigned a value on the property of five thousand dollars (\$5,000).

Commissioner Eardley asked whether the property was advertised for sale. Mr. Ruesch said that everyone in the community of Hurricane was aware that Mr. Edwards was losing his practice.

Mr. Ruesch said that whatever the Constitution says is irrelevant because the Legislature has spoken to this issue and has stated that acquisition cost is the basis for determining property valuation.

Deputy County Attorney Clarke confirmed that Mr. Ruesch's position is that under the law, acquisition costs solely determine property valuation. He asked Mr. Ruesch whether it is also his contention that the audit performed did not produce a fair-market value, and Mr. Ruesch said that he does dispute the results of the audit as representative of fair-market value. He also stated that the State Tax Commission acted in an arbitrary and capricious manner in valuing his property because it did not supply any supporting documentation for its findings. Further, when the Legislature acts, it provides for how the Tax Commission acts. There is no reason that the Constitution trumps the statute when the statute is clear.

Mr. Jenkins said that notes from the auditor who performed the audit indicated that Mr. Ruesch did some legal work for Mr. Edwards, and she asked for the amount of the legal services provided (that would be the same thing as barter income). Mr. Ruesch disputes that submitted documentation demonstrates whether any legal services were exchanged for property. Mr. Clarke referenced an email from Rhonda Hall of the Washington County Assessor's Office to Cindy Dennis (copy attached) in which she referred to Mr. Ruesch's firm having "cleaned up" some accounts for the previous owner.

Mr. Clarke said that substantial information has been referred to during this hearing that was previously unavailable to either the Commission or a party, and he suggested that the Board of Equalization was within its rights to take the matter under advisement and render a final decision at a later date. Additionally, each party is free to turn in any further information for consideration by the Board.

Ms. Rhonda Hall said that in discussions with Mr. Ruesch, she told him that purchasing furniture and other equipment for one dollar did not constitute fair market value. He said that his firm had "cleaned up a lot of messes, also." She then said that it was not an arm's-length transaction because it sounded like a part of the verbal contract. Mr. Ruesch said that any work done for Mr. Edwards's clients was done with separate contracts with those clients.

Mr. Partridge concluded that the Constitution does, in fact, control. It provides for fair market value to be used to assess any and all tangible personal property within the State of Utah.

Commissioner Eardley said that the BOE will take this matter under advisement, and a written decision will be rendered within three (3) weeks of today's hearing date, or by June 6, 2013, during which time each party may provide additional documentation in support of its claim.

Having no other business, the Board of Equalization Hearing was adjourned at 2:36 p.m.

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CHRISTINE S. HALL
DEPUTY COUNTY CLERK

JAMES J. EARDLEY
CHAIRMAN